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there must be a judicial ascertainment of the guilt of the party accused, by a competent tribunal, before it can be exercised. A power conferred on a municipal corporation to adopt ordinances and to enforce violations thereof by prescribed fines does not confer the power of imprisonment, before trial, for a violation of the ordinance, nor after trial for failure to pay the fines.

3. JUDICIAL OFFICERS—*Liability for act—Case at bar.* Judicial officers are not answerable for mistakes of law or errors of judgment in cases where they have jurisdiction of the subject and the parties, and the judgment is one which they are authorized by law to render, but a direction to a policeman to arrest any one who shall in the future violate a city ordinance is not a judicial act. The police commissioners of the city of Norfolk are not judicial officers, and the act complained of is not a judicial act, nor one authorized by law.

4. FALSE IMPRISONMENT—*What constitutes malice.* In an action for false imprisonment, an instruction that "an improper motive may be inferred from a wrongful act based upon no reasonable ground; that such improper motive constitutes malice in law, and that the act need not be prompted by anger, malevolence, or vindictiveness," correctly defines malice.

5. FALSE IMPRISONMENT—*Measure of damages.* In an action for false imprisonment the plaintiff is entitled to recover compensation for the loss of time, for the suffering, bodily and mental, sustained by the wrongful act or acts, and for expenses incurred in procuring a discharge from restraint, including a reasonable attorney's fee. If the act complained of was committed with malice, the plaintiff may also recover punitive damages.

6. MEASURE OF DAMAGES—*Mental or physical pain—Excessive verdict.* There is no precise measure of damages for mental or physical pain, and, where they are elements of damage to be estimated by a jury, the verdict will not be set aside unless the damages are so great as to suggest that the jury have been influenced by passion, prejudice, or ill-will.

NEW YORK LIFE INSURANCE CO. v. DAVIS. AND OTHERS.—Decided at Richmond, March 25, 1897.—*Buchanan, J.*:

1. CONTINUANCE.—*Surprise.* Where a receiver has been appointed to collect an insurance policy, with directions to institute, in his own name, such proceedings thereon as he may be advised is proper, the insurance company has the right to expect that an independent suit will be instituted thereon in the name of the receiver, and it is error to force the company into a trial on the merits against its will in the suit in which the receiver was appointed where the order directing suit by the receiver in his own name remains unrevoked, and it appears that such a proceeding is a surprise to the company and will probably deprive it of making a *bona fide* defence on the merits.

2. RECEIVER—*Rule to show cause against appointment—Failure to answer—Objection afterwards.* Where a rule is made against an insurance company in a chancery suit to which it is a party to show cause why a receiver shall not be appointed to collect its policy which is the subject of the suit, and the company appears by counsel and declines to answer the rule, and makes no objection to the appoint-

ment of a receiver, it will not be thereafter heard to object to the appointment of such receiver.

3. CHANCERY PRACTICE—*Right to trial by jury in chancery causes.* If an insurance company is properly before the court in a chancery suit where its policy is the subject of litigation, any issue or issues raised by its pleadings as to its liability on the policy must be tried according to the rules and principles governing courts of equity in such cases. It is not entitled to a jury trial as matter of right, but only in the event that the case made showed that a jury trial was proper.

CHESAPEAKE CLASSIFIED BUILDING ASSOCIATION V. COLEMAN AND OTHERS.—Decided at Richmond, March 25, 1897.—*Cardwell, J* :

1. EQUITABLE ASSIGNMENT—*What constitutes—Case at bar.* In order to constitute a valid assignment in equity all that is necessary is an order from the person to whom the money is due or coming on the person in whose hands or under whose control it may be to pay it to the payee. In the case at bar there was such order, of which the drawee had notice, and having thereafter paid the money to the drawer of the order, the drawee is liable to the payee for the amount thereof.